



Neutral Citation Number: [2021] EWHC 1197 (QB)

Case No: QB-2021-001629

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
URGENT APPLICATIONS COURT
COURT 14

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7th May 2021

Before :

MR JUSTICE FORDHAM

Between :

VALERIE KAYE VIDLER
- and -
**CHIEF CONSTABLE OF HERTFORDSHIRE
POLICE**

Applicant

Respondent

The **Applicant** in person

Hearing date: 7.5.21

Judgment as delivered in open court at the hearing

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, as delivered as an ex tempore judgment.

MR JUSTICE FORDHAM :

1. The Applicant has appeared today in person in court seeking an order setting aside the order of Chamberlain J on 26 March 2021. That order refused her application for an order for the return of her mobile phone by Hertfordshire police; and it ordered her to pay costs. The Respondent's Deputy Head of Legal Services Mrs Grundy is aware of today's hearing and has made representations in an email (5 May 2021 14:11). Mrs Grundy has informed the Court that attempts were made to email those representations to the Applicant, using an email address which the Applicant had given in her application notice dated 4 May 2021, but they failed when the emails were returned by the server as undeliverable. The Court has also sent the email chain to an email address of a friend, given by the Applicant in evidence accompanying the application. Mrs Grundy told the Court, clearly, in her email, which the Applicant has seen this afternoon:

The [Applicant] is subject to criminal proceedings and her mobile telephone is property subject of crime and is being lawfully retained by the police until the content can be exhibited as evidence. The [Applicant] is fully aware of the lawfulness of the seizure and retention of the phone.

But Ms Vidler tells me that that has happened. She says the police exhibited the content from the phone as evidence on 5.2.21 (PC Blacker). She tells me this was pursuant to a St Albans magistrates court order on 28.1.21, the substantive hearing being fixed for 4.10.21. This was very specific detail. It bothered me.

2. So, I decided to rise and cause an email to be sent to Mrs Grundy by my clerk. Mrs Grundy has very helpfully replied:

My understanding is that the telephone has been examined and some of the content downloaded, however, the telephone needs to be retained by Police to complete the examination for more potential evidence and just in case the download becomes corrupted or is disputed. Returning the telephone to Mrs Vidler at this stage of the criminal proceedings could jeopardise the case and Mrs Vidler could erase files /evidence. Mrs Vidler also has the opportunity to raise her concerns through the Magistrate's Court procedure.

3. The question is what should the Court do today. I am extremely anxious to avoid another hearing in this matter. I am not going to direct one, at least not yet. But I am sufficiently concerned that what was put forward as the justification (content exhibited as evidence) may in fact have happened. I am also worried about the difference between (a) saying 'we are retaining it until we can exhibit the content as evidence' and (b) 'I understand we are retaining it – without saying whether we have or have not exhibited the content as evidence, as is claimed – to complete an examination for potential evidence or in case of dispute'. The concern is reinforced if it is right that the deadline for the evidence was indeed 5.2.21, as directed on 28.1.21 by the magistrates court. Ms Vidler tells me that she has, for a long time, been 'sofa surfing'; that being without her phone is making life for her extremely difficult; that she needs it back; and that the police have no good reason to retain it.
4. I am going to order as follows:

- (1) The Respondent shall have until 4pm Friday 14 May 2021 – if it wishes to take the opportunity – to write a letter to confirm whether the content has, or has not, been exhibited as evidence and to explain clearly the basis for retention of the phone and when the Respondent is proposing to return it. Any such letter should also provide copies of any evidence filed in the magistrates court which exhibits content from the phone. The letter is to be sent to Ms Vidler c/o [address given] and sent by email to the clerk to Mr Justice Fordham [email address given] cc'd to the “crabbstyle” email address [address given]. If the Respondent decides not to take advantage of the opportunity, it shall write by the same means by the same date to say so.
 - (2) The Applicant shall have until 4pm on Friday 21 May 2021 to write a letter stating whether she maintains that retention of the phone is unjustified and, if so, why she says that. The Applicant shall ensure that the letter is sent by first class post to Mrs Grundy, marked “Mrs Allison Grundy, Deputy Head of Legal Services” at the address in paragraph 1 of the Order of Tipples J on 16.3.21. The Applicant shall also ensure that the letter is provided from the “crabbstyle” email address (paragraph 1 above), to Mrs Grundy at her email address [address given], and to Jessica Turner’s email address (paragraph (1) above).
 - (3) The application to set aside Chamberlain J’s order shall be considered by Fordham J, in the first instance on the papers, on the first conveniently available date after Monday 24 May 2021.
5. I am satisfied that this course is necessary in the interests of justice, having regard to the overriding objective. I have a nagging doubt, that I cannot shake, that there is a continued retention of this mobile phone, something very important to a person’s everyday life, without any real justification. Mobile phone retention must be a regular challenge for the police, balancing the various interests, but it may be that there is no good reason why all relevant content should not be readily downloadable and retainable. The reason which was given – **“until the content can be exhibited as evidence”** – continues to resonate. The key words are “until” and “can”.
6. I confess I was on the verge of dismissing this application, based on what I had read in the papers. The procedural background is very much against Ms Vidler. I will set it out. By an application notice (N244) the Applicant sought an order against the Respondent (named by her as the Hatfield Police) for the return of the mobile phone which the police have held since May 2020 for what she said was “no justified reason”. On 16 March 2021 the application came before Tipples J, who made an order. Tipples J’s order did several things. Firstly, it required that notice of the application be given to the Respondent, so that any hearing of the application for return of the mobile phone would be on notice to the Respondent would have an opportunity to put its side of the story to the Court. That has led, ultimately, to the explanations given. But it was not possible to get the email of 5.5.21 to the Applicant until the Court achieved that today.
7. Secondly, Tipples J’s order required the Applicant to “forthwith issue a claim form identifying her claim against the [Respondent]”. The order recorded the correct title for the Respondent and set out for the Applicant the address to use for service. It continued: “the [Applicant] to serve the claim form on the [Respondent] at the address set out ... above by 4pm on Tuesday, 23 March 2021”. Tipples J in the reasons set out at the bottom of her order explained the importance of those steps. She said: “The [Applicant]

must issue a claim form, and serve it on the [Respondent], before the matter comes back before the Court ... on Friday, 26 March 2021 in the Applications Court”. The Respondent’s solicitor has told the Court (on 5 May 2021) that: “The [Applicant] has failed to comply” with this part of the order. That is true. Ms Vidler tells me that she felt she needed access to the phone to be able to articulate her claim. But, obviously, that is a catch-22. In fact, she has been able to explain to me today why she says it is unjustified for the police to retain the phone. The reason is: (i) the police say they needed it for evidence but (ii) they have been able (and have had plenty of time) to get the evidence from the phone. Mrs Grundy confirmed (i) and I asked her about (ii). What the Applicant should have done in this case is issue a claim and tell her story as to why the retention of the phone is unjustified. This failure has weighed in the balance as to whether I ought simply to dismiss the application today.

8. Thirdly, Tipples J directed that the case be listed for mention and such directions as are appropriate before the Applications Judge at 10am on Friday, 26 March 2021. That was so that the case could be considered, in the light of notification of the Respondent and compliance with the direction to issue a claim form identifying the claim. The order of Tipples J also directed that, since the hearing was “likely to be conducted remotely”, the parties “must email their contact details to the List Office... by 10am on Thursday, 25 March 2021 in order for a remote hearing to be facilitated on Friday, 26 March 2021, if that is what the Applications Judge requires”. That was what the Applications Judge – Chamberlain J – required and the remote hearing took place at 10am on Friday, 26 March 2021. That hearing was listed in the Court’s published cause list.
9. The Applicant tells me that – since she does not have her phone, nor a computer (she would need to try and book a one hour slot at a library) – a remote hearing is not something she could attend. On Thursday, 25 March 2021 she had attended the public counter at the Royal Courts of Justice in person requesting that the hearing the next day be adjourned. She issued an application notice (N244) seeking (a) an order for the mobile phone to be returned and (b) an adjournment of the hearing listed the next day. In relation to the adjournment, she said: “I would like to adjourn the hearing 26/3/21 10am” and “hearing for a later date would be appreciated otherwise court time is being wasted”. The Applicant evidently – based on what she has told me today – thought she had done enough to get an adjournment, but later found she had not. What she needed to do, at the time, was to set out why she could not attend a remote hearing (much, incidentally, as Mrs Grundy has set out as to why she would request any hearing be a remote hearing). This failure has also weighed in the balance as to whether I ought simply to dismiss the application today.
10. At the remote hearing on Friday, 26 March 2021 Chamberlain J, pursuant to CPR rule 3.3, refused the application for an order requiring the return of the mobile phone (an application which had been made in the application notices of 14 November 2020 and now 25 March 2021). He recorded that it appeared to the Court that the Applicant had failed to comply with identified paragraphs in the order of Tipples J (including those paragraphs relating to the issuing and service of a claim form). He ordered the Applicant to pay the Respondent’s costs summarily assessed in the sum of £410 within 21 days of service of the order. Then, by her application notice originally dated 31 March 2021, and re-dated 4 May 2021 (issued with the benefit of a third fee remission certificate) the Applicant sought an order setting aside Chamberlain J’s order. She supplied “evidence” in the form of an email print out referring to an inability to attend court due

to engineering works. But that was an email from February 2021 and does not assist her. What has assisted her most has been the opportunity to explain her position to me, in person, today. In fact, this case illustrates just how important the ability to come to a court room can be, for a litigant in person. I have identified my concerns and the opportunity I want to give. I will consider, on the papers, what to do next, in accordance with the Order I have described. What comes next in this case remains to be seen.

7.5.21